

HOUSE BILL REPORT

HB 1072

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to prohibiting certain sex offenders on community custody from accessing the internet.

Brief Description: Prohibiting certain sex offenders on community custody from accessing the internet.

Sponsors: Representatives Simpson, Kelley, Pearson, Chase, Van De Wege, Hudgins, Seaquist, Morrell and Williams.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/26/10, 1/27/10 [DPS].

Brief Summary of Substitute Bill

- Requires the prosecutor in a sex offense case to file a special allegation of Internet facilitation when facts are likely to support a finding that the defendant used the Internet to facilitate the commission of the offense by locating, stalking, or communicating with the victim.
- Requires the court, when sentencing an offender convicted of a sex offense with a finding of Internet facilitation, to impose conditions of community custody to restrict, monitor, or prohibit the offender from accessing the Internet.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Alexa Silver (786-7190).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Community custody is the portion of an offender's sentence of confinement served in the community subject to controls placed on the offender's movement and activities by the Department of Corrections (DOC). The sentencing court is required to order a term of community custody for an offender who is convicted of specified crimes, as well as any offender sentenced under the drug offender sentencing alternative, the special sex offender sentencing alternative, the work ethic camp, or non-persistent sex offender provisions. Community custody is ordered pursuant to the community custody range set out in statute or up to the period of earned release, whichever is longer.

While on community custody, offenders are subject to a variety of conditions. For example, conditions that may be waived by the court include: reporting to a community corrections officer; working at education, employment, or community restitution approved by the DOC; refraining from possessing or consuming controlled substances; paying supervision fees; and obtaining prior approval by the DOC for residence location and living arrangements. Discretionary conditions include: remaining within or outside of geographical boundaries; refraining from contacting the victim or a class of people; participating in counseling; refraining from consuming alcohol; or complying with crime-related conditions.

The DOC is also authorized to impose conditions of community custody as long as they do not conflict with any court-ordered conditions.

If the offender violates the conditions of community custody, the offender may be required to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition on the alleged violation. However, if a sex offender violates any condition of community custody, the DOC may impose a sanction of up to 60 days confinement in a local correctional facility for each violation. Additionally, if the offender has served his or her maximum term of confinement, the DOC may impose a sanction of up to 60 days to be served in the community through programs such as work release, work crew, daily reporting, electronic monitoring, community restitution, inpatient treatment, or educational or counseling sessions.

Summary of Substitute Bill:

In prosecuting a sex offense, the prosecutor must file a special allegation of Internet facilitation when sufficient admissible evidence exists that the defendant used the Internet to facilitate the commission of the offense. "Internet facilitation" and "used the Internet to facilitate the commission of the offense" mean that the defendant used a specific Internet protocol address or handheld wireless device to visit or log onto an Internet site to locate, stalk, or communicate with the victim.

The prosecutor has the burden to prove beyond a reasonable doubt that the defendant used the Internet to facilitate the commission of the offense. The special allegation may not be withdrawn without court approval, and the court may not approve withdrawal of the allegation unless it is necessary to correct an error or the evidence is insufficient. If a jury finds the defendant guilty, it must find a special verdict as to whether the defendant used the Internet to facilitate the commission of the offense.

Upon conviction, the court must impose conditions of community custody to prohibit the offender from accessing or using a computer or any other device with Internet capability without approval of the DOC. The offender must submit to unannounced inspections of his or her computer by a community corrections officer or a computer specialist employed by or under contract with the DOC. The inspection may include the retrieval of data from the computer or device and any internal or external peripherals, and the removal of the data, computer, device, or peripheral to conduct a more thorough investigation. The offender must allow hardware or software systems to be installed on his or her computer to monitor Internet use and must submit to any other restrictions the DOC deems appropriate regarding use or access to a computer or other device with Internet capability.

Substitute Bill Compared to Original Bill:

The substitute bill defines "Internet facilitation" and "used the Internet to facilitate the commission of the offense" to mean that the defendant used a specific Internet protocol address or handheld wireless device to visit or log onto an Internet site to locate, stalk, or communicate with the victim. The substitute bill corrects the effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was prompted by a television show where men used a chat room to arrange to meet with who they thought were teenage girls. This bill will help make the Internet safer for children. If a sex offender uses the Internet to commit a sex offense, he or she should not be allowed to do it again.

(With concerns) For felony sex offense convictions, it is standard to impose conditions on the use of computers. The conditions in subsections two through four reflect existing practice, but prohibiting the use of computers would make it impossible for offenders to complete work and school tasks and seek employment and housing.

(Opposed) None.

Persons Testifying: (In support) Representative Simpson, prime sponsor.

(With concerns) Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.